

TRANSFORMING
THE UK'S
RESPONSE
TO HIV



Advice for job applicants
living with HIV

HIV + Recruitment

Personal Information

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NAT gratefully acknowledges the support of the Trust for London (formerly the City Parochial Foundation) who funded this resource.



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NAME (LAST NAME FIRST)

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ADDRESS

Revised June 2012

Most people living with HIV can lead conventional working lives; applying for new jobs, managing career progression, and achieving their goals. Although workplace discrimination may still exist, things are getting better. All the time, employers are updating and developing their workplace policies and practices to ensure that people living with HIV get a fair deal. Recent updates to disability discrimination law in the Equality Act 2010 offer greater protection to people living with HIV from discrimination in employment. Under the Equality Act, HIV is defined as a disability from the point of diagnosis. So whether or not you consider yourself disabled, you are protected against disability discrimination at work.

Elsewhere in this booklet there is advice and guidance for employers to help them implement best-practice policies towards recruitment for people living with HIV. Employers who follow this guidance will offer a fair and non-discriminatory recruitment procedure.

However, not all employers will have such rigorous policies in place, and during the course of the recruitment process, people living with HIV may occasionally experience discriminatory barriers which can negatively impact on an applicant's fair treatment. The following pages offer advice on a range of situations which can occur if recommended policies are not implemented, considering issues about whether to disclose, what questions you may be asked, and how to respond.

Positive attitudes amongst employers

Employers generally want not only to be fair in their recruitment and employment practices but to be seen to be fair – high profile discrimination cases can damage an organisation’s reputation and be ‘bad for business.’ Initiatives to improve the treatment of disabled people in the recruitment process will also benefit people living with HIV. For example, employers displaying the ‘Positive About Disabled People’ or ‘Two Ticks’ logo have made a commitment to employing disabled people and this includes people living with HIV.¹ Many employers now have positive statements about disability and about HIV in their equality and diversity and employment policies.

Some organisations may have existing policies looking specifically at HIV available on their website or highlighted as part of the recruitment process, or they may have related commitments to promoting good practice in such areas as disability, race equality, gay rights, and corporate social responsibility. Discrimination does exist and you should bear this in mind when applying for a job. But it is a mistake

to assume all prospective employers and colleagues have stigmatising and discriminatory attitudes about HIV. Most people want to do the right thing.

You may have worries about how your health will cope with employment in general or with the particular job you are thinking of applying for. If you do have concerns, you could consider talking to health professionals at your clinic, other people living with HIV who are working, or an organisation that supports people living with HIV. You may also be able to access specific services provided by the Department for Work and Pensions, to help with re-training or other employment-related services.²

Legal protection

An important new legal protection for people living with HIV came in the form of the Disability Discrimination Act (DDA) 2005, which extended the definition of disability to cover HIV positive people effectively from the point of diagnosis. This meant that you were protected by the provisions of the Disability Discrimination Act 1995, which made it unlawful to discriminate in the context of employment, as well as in the provision of goods, services,

¹ Further information about the ‘Two Ticks’ scheme can be found at www.direct.gov.uk

² For example, your local Jobcentres may refer you to a Disability Employment Adviser.

For details see www.direct.gov.uk

education and other areas. The Equality Act 2010³ has now replaced the Disability Discrimination Act, introducing further protection for people living with HIV.

The law protects you from any discrimination at work relating to your HIV positive status and requires employers to make 'reasonable adjustments' – changes to the workplace or work practices which remove a substantial (more than minor or trivial) disadvantage that a disabled person might experience because of their disability. This protection also applies to the job application process.

It is illegal for an employer to discriminate against you when you apply for a job because you are living with HIV. You do not need to think of yourself as disabled or call yourself disabled to benefit from these legal protections.

³The Equality Act 2010 does not generally apply in Northern Ireland, with a few exceptions. Northern Ireland has separate equalities laws in place. For information contact the Equality Commission for Northern Ireland.

The Equality Act 2010 also protects people from discrimination if they are mistakenly perceived to be HIV positive, or if they are associated with someone who is HIV positive. For example, if someone was refused a job interview because of their partner's HIV status, or because they are assumed to be HIV positive because they are gay or are from a country with high levels of HIV, this would be unlawful discrimination. Most people living with HIV will require, if anything, only minimal reasonable adjustments in the workplace. These might include time to allow you to see your doctor, flexibility in your work schedule to allow you to adjust to side-effects of treatment, or privacy in order to take medication. You can find out more about reasonable adjustments and HIV in our companion booklet *HIV@ Work: Advice for people living with HIV*.

Should you wish to discuss possible reasonable adjustments further before speaking to an employer or prospective employer, ring the Equality and Human Rights Commission. Contact details are available in the 'Further information, advice and resources' section of this booklet.

The Data Protection Act (DPA) 1998 regulates how your personal information is processed and protects all personal sensitive data disclosed by a job applicant or employee. This includes information about your physical or mental health condition. The Data Protection Act specifies that explicit consent is needed for personal sensitive information about your health to be processed within an organisation.⁴

Every responsible employer should have procedures in place to ensure that personal information about you is properly handled. The Information Commissioner's Office has produced a code of practice for employers and can also advise where people believe that their rights may have been infringed.⁵

⁴ The term 'personal sensitive data' has a technical definition within the Data Protection Act (1998).

More information about this and other aspects of Data Protection can be found at www.ico.gov.uk

⁵ The Information Commissioner's Office 'The Employment Practices Code' (2005) is available at www.ico.gov.uk

⁶ Or included you in a group of successful candidates to be offered a job when a vacancy becomes available.

Will I be asked about disability?

The Equality Act 2010 limits the circumstances when an employer can ask you a health-related question before they have offered you a job.⁶ They can only ask health-related questions for five specific reasons:

- To find out if you need any reasonable adjustments for the selection process. (For example, if you experience side effects from your medication in the morning you might want to request that you have an interview after a certain time).

These questions only relate to the need for reasonable adjustments in the application process, and response is completely voluntary.

If you do need and request reasonable adjustments, you don't have to provide details of your disability – only the adjustments that are needed (see more detail below).

- To decide whether you can carry out a function that is essential ('intrinsic') to the job. (For example, if someone was applying to be a scaffolder, the construction company would need to ask questions related to mobility and whether the applicant experienced vertigo).

It is worth remembering that there are only very limited and specific examples when it would be appropriate for an employer to ask a question related to this. An employer would not be able to ask you about your HIV status because they wrongly assumed that someone who is HIV positive would be too tired to carry out the role. An employer can only ask this question if, even with reasonable adjustments, you could not carry out a task that was essential to the job.

- To take positive action to assist disabled people. (For example, employers who are part of the 'Two Tick' scheme will interview all disabled applicants who meet a job's minimum requirements – though it is important to note that it is still up to you whether you choose to disclose your HIV status to the employer).
- To monitor the diversity of people applying for jobs (see more below).
- When the job has a genuine requirement for the person in the role to have a disability. (For example, a counselling service for people who are newly diagnosed with HIV may have a requirement that the applicant is living with HIV).

If you feel you have been asked something about your health in general or your HIV status in particular that does not fit one of the reasons above, you may simply choose not to answer that question. You may also ask to speak to someone involved in the recruitment process about your concerns. You can also make a complaint to the Equality and Human Rights Commission who have the power to conduct an investigation into the employer's recruitment processes. For advice about this, or what to do when you think a health or disability-related question has been asked inappropriately, contact the Equality and Human Rights Commission (for details see 'Further information, advice and resources').

If you do respond to a question an employer asks about your health or disability for a reason not given above and you then discover that your application has been rejected, you may be able to take the employer to an Employment Tribunal with a case of direct disability discrimination. It would then be the employer's responsibility to show that they had not discriminated against you.

Questions about reasonable adjustments needed for the recruitment process

As noted above, employers may ask about reasonable adjustments you may specifically need in order to go through the recruitment process and attend an interview. You might, for example, experience side-effects from medication or have mobility needs. If such needs are connected with your HIV positive status, this could be an opportunity to disclose your HIV positive status to the employer and discuss what reasonable adjustments you may on occasion need were you to be offered and take up the job. However, you may not wish to disclose your HIV status at this stage, and you can ask for reasonable adjustments without specifically connecting them to your HIV status.

Equal opportunities monitoring forms

Employers generally use equal opportunities forms to monitor their own progress in recruiting a diverse workforce. They are not generally considered as part of your application and are usually detachable. There is no obligation to complete them but they may be useful in helping employers to check that they are receiving applications from people

from a range of backgrounds and are treating people fairly. Best practice requires such forms to be dealt with confidentially, and in many cases, they will be treated anonymously. You can always check with the employer how the form is going to be used and processed if you have any concerns.

If you feel concerned that returning equal opportunity forms may cause discrimination, remember that its completion is optional. You can return it in a separate envelope to your application form, or simply not complete it.

An equal opportunities form may ask about disability, including whether you consider yourself disabled. Many people living with HIV will not define themselves in this way, but as stated above, you do not need to consider yourself disabled to enjoy the protections of the Equality Act 2010. So how you choose to respond to this question on a form is a personal decision.

Other occasions when HIV status might arise

There are other occasions during a job application process where you might want to consider disclosure of your HIV status:

Gaps in employment

If you have had time away from employment as a result of your HIV positive status, you may feel uncomfortable about answering questions about gaps in your CV. If you are asked during interview to account for such gaps, you may wish to consider the following potential responses:

- Explain that gaps in your CV are the result of a disability covered by the Equality Act 2010, but one that does not impact on your eligibility for consideration for or appointment to a particular role.
- State that gaps in employment result from a specific health condition which is now managed, and you would be happy to provide further information to an Occupational Health specialist if required.

- Disclose your HIV status, emphasise your current good health and success in managing your condition, try to address any concerns the interviewer might have, and/or offer to provide additional information if required.
- Talk about any gaps in your employment in terms of personal development you might have undertaken during these times, without referring to HIV. You might want to talk about any courses you attended, hobbies, involvement in community groups, personal development, etc.

Remember, under provisions in the Equality Act 2010 employers cannot ask you directly if gaps in your CV are the result of a disability or health condition.

Medical questionnaires

Employers cannot ask you to fill in a medical questionnaire as part of their recruitment process prior to the offer of a job.⁷ Once a job offer has been made, you may be asked by an employer to complete a medical questionnaire.

Failing to disclose honestly on a medical questionnaire could be considered by an employer as grounds for termination of employment. If you are asked questions you think are inappropriate seek advice from the Equality and Human Rights Commission. Where available, you may also request to communicate directly with the prospective employer's Occupational Health service, so that the likelihood of discrimination is minimised. If a job offer was withdrawn purely because of your HIV status and this is not a relevant factor in your ability to do the job, you may make a complaint or bring a case under disability discrimination law.

References

Former employers who may provide references for you in connection with a prospective job cannot disclose your HIV status without your consent, and doing so would be against the law. Prospective employers should not request specific information about

disability or HIV status, and doing so could be seen as discriminatory practice.

If concerned, you may wish to see the actual reference that has been provided to your prospective employer. While your former employer would not be obliged to give you a copy of any reference they make, your prospective employer is required by the Data Protection Act 1998 to provide this information to you if you request it.

When including a referee's contact details in a job application, or after a job offer has been made when you know that a reference request may be pending, you might wish to contact a former employer to let them know they may be approached.

If your former employer knows about your HIV status, you may wish to use this opportunity to ensure that they don't mention this in your reference. You should explain that doing so without your consent would be breaking the law under the Data Protection Act 1998.

Medical examinations

Some employers may have policies that require successful job applicants to undertake a medical examination. Such policies should not discriminate against disabled people. As with medical questionnaires, such examinations are not permitted, except in very limited circumstances, until the offer of a job has been made.⁸

Any medical assessment has to be appropriate and relevant to the role. If medical examinations are 'universal' (a requirement for all staff), it is not discriminatory practice to expect you to have one. However, any discriminatory behaviour arising after a medical assessment (such as withdrawing a job offer on the basis of disability) would contravene the Equality Act 2010.

Information collected about you during a medical examination should be kept strictly confidential, and used only for its intended purpose within the employer's existing policies. You should be given a clear understanding about what the information will be used for, who is likely to see it, and how it will be retained. Your consent should always be sought before confidential information is shared.

⁷ Or prior to an offer to be included in a group of successful candidates to be offered a job when a vacancy becomes available. There are some extremely limited exceptions.

⁸ Or you have been included in a group of successful candidates to be offered a job when a vacancy becomes available.

These legal requirements also apply to any third party or external assessors used to conduct medical examinations on behalf of the employer.

Requirements of the role

There may be specific criteria of the person specification that will be affected by your HIV status, such as travel requirements. There are complications which may result from being required to undertake international travel to countries which may have visa restrictions for HIV positive people, although travel



My line manager was incredibly supportive. He put me in touch with services in the organisation for support. He asked me how I was and if things proceed if I wanted all my notes or if I wanted him to speak to the manager about it.... I gave consent. They were really, really good.”

restrictions in many countries have now been lifted. This may have a significant impact on whether you choose to disclose your HIV positive status, although you may wish to wait to do so until the offer of a job has been made. It may be possible for your employer to make reasonable adjustments to assist you to carry out the role.

In these, or other complex situations which might need to be addressed on an individual basis, you should seek specialist advice from one of the organisations listed at the end of this booklet.

Should I proactively disclose?

So far this booklet has looked at stages you could encounter in the job application process where you might have to think about whether disclosure of your HIV positive status is a useful or appropriate response. But you might also want to think about whether or not to tell your prospective employer proactively about your HIV status, for example, if you have had long gaps when you have been unable to work and want to explain this.

Ultimately, the decision is yours – there is no right answer except the one that is right for you. There are a number of things to consider in making a decision – this booklet aims to help you think things through. This section focuses on disclosure during the recruitment process.

For more information on disclosure when you are already in employment see our companion publication *HIV@Work: Advice for people living with HIV*.

Some initial questions to consider before disclosing

What am I disclosing?

Of course you are disclosing the fact you are living with HIV. But many people know little about what in reality that means. You may wish to emphasise periods of good health, perhaps explaining that your health is well maintained by HIV treatment, for example. You may find it helpful to provide your employer with some printed information about HIV at work, such as this booklet or NAT's 2009 research report *Working with HIV*.

To whom should I disclose?

Some people will be happy to be entirely open about their HIV status. Others may prefer to disclose on a 'need-to-know' basis. This might vary depending on your individual circumstances and the type of work you are applying for. However, you have a right to specify your preferences about who is informed

and insist that any onward disclosure takes place only after your explicit permission has been given (you could specify that this must be in writing).

How can I keep my disclosure confidential?

Before disclosing, you might like to ask for the prospective employer's policy on compliance with the Data Protection Act 1998 and discrimination law and check that you are satisfied that the right safeguards are in place. You could ask for assurances about how personal sensitive data is handled and who would have access to it. The main thing to remember is – you are in control of the disclosure process. If you decide that you are going to disclose your HIV positive status, you have the right to decide when, how and to whom you do it. You have every right to disclose on your terms, not the employer's.

Tackling discrimination

Many people living with HIV never face discrimination related to their HIV status but if you do, it can feel devastating. If you experience HIV-related discrimination when applying for a job there are various steps you can take:

- **Raise the matter informally.**
Discussing the situation with your potential employer may be enough to resolve the issue. A simple misunderstanding or oversight can sometimes easily be put right.
- **Discuss your concerns with the Equality and Human Rights Commission.** They will be able to offer you advice and can take action if a prospective employer has asked inappropriate questions about your health or disability before the offer of a job has been made.
- **Bring an employment tribunal case.** Taking a prospective employer to tribunal should be your last resort. The procedure is rigorous, precise and often protracted. It can be a stressful process, and bringing a case may also mean that you will have to disclose your HIV status. Discrimination cases can become complex and your chances of success may be better if you have legal advice and representation.⁹

⁹ For more information see www.employmenttribunals.gov.uk



I've found it's really difficult with the application forms, because I've got such a significant gap in my CV now, that employers wanna know, you know you have to explain any gaps, and I've not had a baby, I don't wanna sort of say these are the reasons I've took so long out of work, and it wouldn't have been so long if I could sort of get past the application form, and the gap on my CV, but it's sort of got more and more difficult the longer and longer and longer...(it's gone on)."

Whatever you decide, a few key principles apply:

- Keep detailed written records of events – you may need to provide these as evidence or refer to them in future.
- Seek advice and representation where you need it – a range of organisations can offer this. See 'Further information, advice and resources' for details.
- Get support – being involved in an employment dispute can be emotionally distressing but there are organisations that can help. See 'Further information, advice and resources' for details.

For more information about tackling discrimination in the workplace see our companion booklet

HIV@Work: Advice for people living with HIV.

Some final thoughts

- The choice of whether, how and when to disclose your HIV status remains yours. Being informed about the implications of your decision can help you think things through. The restrictions on employers asking questions about disability and health in the Equality Act 2010 mean that for many people it is no longer necessary to consider whether to disclose their status until they have been offered a job. At this stage, you may only want to disclose if you will require reasonable adjustments to perform the role.
- Most people living with HIV do not experience workplace discrimination and the fear of being discriminated against should not put people off taking up employment or training opportunities. If you feel you have been discriminated against during the recruitment process legal protection is available.
- If you are asked inappropriate questions about your health or disability on an application form or in an interview, you do not have to answer. You can explain to those conducting the recruitment why the question is not relevant or appropriate. If you think that you were asked an inappropriate question at interview, make a note of it. The Equality and Human Rights Commission can provide advice on which questions in applications and interviews are unlawful.

If you have been successful in your application for a job and want to find out more about managing your HIV at work, see our companion booklet *HIV@Work: Advice for people living with HIV*. This is available from our website (www.nat.org.uk).

Further information, advice and resources

Equality and Human Rights Commission (EHRC)

The EHRC have a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the seven “protected” grounds - age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.

Helpline:

- England: 0845 604 6610
- Scotland: 0845 604 5510
- Wales: 0845 604 8810

www.equalityhumanrights.com

In Northern Ireland, you can contact the Equality Commission for Northern Ireland.

Enquiry Line: 028 90 890 890
www.equalityni.org

Trade Union Congress (TUC)

The TUC has 58 affiliated unions representing 6.2 million working people from all walks of life. The TUC campaigns for a fair deal at work and for social justice at home and abroad.

www.tuc.org.uk

Acas (Advisory, Conciliation and Arbitration Service)

Acas has a range of services which can help individuals or groups of employees to avoid or resolve problems and disputes in the workplace. The Acas helpline offers free, confidential and impartial guidance on employment rights and workplace issues. They provide general information on employment rights and responsibilities and can also help

employees and employers who are involved in an employment dispute to identify practical ways of sorting out the problem.

Helpline: 08457 47 47 47
www.acas.org.uk

Disability Law Service

The Disability Law Service is a national registered charity that provides confidential and free legal advice to disabled people and their families, carers and advocates.

Advice line: 020 7791 9800
www.dls.org.uk

Advicenow

Advicenow is an independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

www.advicenow.org.uk

Information Commissioners Office

The Information Commissioner's Office is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

Helpline: 0303 123 1113
or 01625 545745

www.ico.gov.uk

THT Direct

Provides information, support and advice on HIV and sexual health.

THT Direct: 845 1221 200

www.tht.org.uk

NAM aidsmap

NAM's e-atlas can direct you to an HIV support organisation in your local area.

www.aidsmap.com/

Disability Rights UK

The largest national pan-disability organisation in the UK led by disabled people which campaigns for disability equality and human rights.

www.disabilityrightsuk.org
